

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KRISTIN SWINK, N/K/A, KRISTIN NEARING,

Plaintiff,
v.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

Case No. 11-5305 RBL-KLS

REPORT AND RECOMMENDATION

This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule MJR 4(a)(4) and as authorized by Mathews, Secretary of H.E.W. v. Weber, 423 U.S. 261 (1976). This matter is before the Court on the stipulated motion for remand. (ECF #23). After reviewing the parties' stipulated motion and the remaining record, the undersigned recommends that the Court grant the parties' motion, and remand this matter to the Commissioner for further proceedings.

This Court recommends that on remand the ALJ will conduct a de novo hearing. No specific aspect of the Commissioner's final decision is affirmed. Plaintiff may present new arguments and further medical evidence, if such evidence becomes available. The ALJ and Plaintiff may also raise and pursue any additional issues.

This Court hereby reverses the Commissioner's decision under sentence four of 42 U.S.C. §405(g) with a remand of the cause to the Commissioner for further proceedings. *See Melkonyan v. Sullivan*, 501 U.S. 89 (1991).

Upon proper presentation to this Court, Plaintiff will be entitled to reasonable attorney fees and costs pursuant to 28 U.S.C. §§ 1920, 2412(d).

Given the fact of the parties' stipulation, the Court recommends that the District Judge immediately approve this Report and Recommendation and order the case **REVERSED** and **REMANDED**. A proposed order accompanies this Report and Recommendation.

DATED this 28th day of November, 2011.

John L. Stromberg

Karen L. Strombom
United States Magistrate Judge